

ESTTA Tracking number: **ESTTA280886**

Filing date: **04/29/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	DERMAdoctor, Inc.		
Entity	Corporation	Citizenship	Missouri
Address	1901 McGee Street Kansas City, MO 64108 UNITED STATES		

Attorney information	Wade Kerrigan Husch Blackwell Sanders LLP 4801 Main Street, Suite 1000 Kansas City, MO 64112 UNITED STATES pto-kc@huschblackwell.com Phone:816-983-8000		
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### Applicant Information

Application No	77618399	Publication date	03/31/2009
Opposition Filing Date	04/29/2009	Opposition Period Ends	04/30/2009
Applicant	Western Holdings, LLC 1821 Logan Avenue Cheyenne, WY 82001 UNITED STATES		

### Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Cosmetics
Class 005. All goods and services in the class are opposed, namely: Dietary supplements

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2978251	Application Date	07/03/2002
Registration Date	07/26/2005	Foreign Priority Date	NONE
Word Mark	DERMADOCTOR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 003. First use: First Use: 2003/06/30 First Use In Commerce: 2003/06/30 Skin care products, namely, non-medicated care preparations Class 005. First use: First Use: 2003/06/30 First Use In Commerce: 2003/06/30 Skin care products, namely, medicated skin care preparations

U.S. Registration No.	3018417	Application Date	11/08/2002
Registration Date	11/22/2005	Foreign Priority Date	NONE
Word Mark	DERMADOCTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/06/30 First Use In Commerce: 2003/06/30 COMPUTERIZED ON-LINE RETAIL SERVICES IN THE FIELD OF SKIN CARE PRODUCTS AND COSMETICS		

U.S. Registration No.	2673702	Application Date	06/05/2000
Registration Date	01/14/2003	Foreign Priority Date	NONE
Word Mark	DERMADOCTOR.COM		
Design Mark	<b>DERMADOCTOR.COM</b>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 On-line retail store services featuring skin care products Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 Providing health information regarding skin care products and skin care issues		

U.S. Registration No.	3240400	Application Date	08/10/2004
Registration Date	05/08/2007	Foreign Priority Date	NONE
Word Mark	THE DERMADOCTOR SKINSTRUCTION MANUAL		
Design Mark	<b>THE DERMADOCTOR SKINSTRUCTION MANUAL</b>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2005/01/02 First Use In Commerce: 2005/01/02		

	Printed matter, namely books regarding skin care and medicated and non-medicated skin care products
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Attachments	76063212#TMSN.gif ( 1 page )( bytes ) 78465002#TMSN.jpeg ( 1 page )( bytes ) 2009042913181022.pdf ( 14 pages )(2237718 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Wade Kerrigan
Name	Wade Kerrigan
Date	04/29/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Filed By: )  
 )  
Western Holdings, LLC )  
 )  
Serial No. 77/618,399 )  
 )  
Filed: November 20, 2008 )  
 )  
Published: March 31, 2009 )  
 )  
Mark: DERMA FACTOR )  
 )

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451  
**ATTN: BOX TTAB - FEE**

DERMAdoctor, Inc. believes that it will be damaged by registration of the mark shown in Serial No. 77/618,399 and hereby opposes registration of that mark. Serial No. 77/618,399 is an application of Western Holdings, LLC, filed November 20, 2008 and published for opposition in the Official Gazette on March 31, 2009.

The grounds for the opposition are as follows:

1. DERMAdoctor, Inc (“Opposer”) is a Missouri corporation, having a place of business at 1901 McGee Street, Kansas City, Missouri 64108.
2. Upon information and belief, Western Holdings, LLC is a limited liability company of Wyoming having a place of business at 1821 Logan Avenue, Cheyenne, Wyoming 82001.
3. Opposer is the owner of, among others, the following marks: DERMADOCTOR, U.S. Reg. No. 2,978,251, registered on July 26, 2005 for skin care products, namely, non-

medicated care preparations in International Class 003 and skin care products, namely, medicated skin care preparations in International Class 005; DERMADOCTOR, U.S. Reg. No. 3,018,417, registered November 22, 2005 for computerized on-line retail services in the field of skin care products and cosmetics in International class 035; DERMADOCTOR.COM, U.S. Reg. No. 2,673,702, registered January 14, 2003 for on-line retail store services featuring skin care products in International Class 035; and THE DERMADOCTOR SKINSTRUCTION MANUAL, U.S. Reg. No. 3,240,400, registered on May 8, 2007 for printed matter, namely books regarding skin care and medicated and non-medicated skin care products in International Class 016 (the "DERMAdoctor Marks). TEAS printouts of the DERMAdoctor Marks are attached as Exhibit A.

4. Since at least as early as 1999, Opposer has sold skin care products, cosmetics, dietary supplements, analgesics, anti-aging products, anti-fungal products, anti-inflammatory products, antiperspirants, astringents, cleansers, exfoliates, foot care products, hair care products, masques, moisturizers, nail care products, oral and dental products, sun protection products, toners, wound care products, and other various products throughout the United States in connection with the DERMAdoctor Marks and other highly similar marks.

5. By reason of Opposer's long and extensive use of its DERMAdoctor Marks, the DERMAdoctor Marks have achieved widespread and favorable public recognition and has become an asset of great value as a symbol of Opposer's services and goodwill.

6. Opposer has invested a great deal of time and money in promoting its goods and services under the DERMAdoctor Marks and it continues to use and promote these goods and services under the DERMAdoctor Marks.

7. By virtue of Opposer's continuous, exclusive and widespread use of the DERMAdoctor Marks, the DERMAdoctor Marks are entitled to a broad scope of protection.

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